

# In the Interest of EQUALITY

Sex-Selective Abortion, Ethics and Human Rights

A Discussion Paper

Abhijit Das

Director, Centre for Health and Social Justice and  
Clinical Assistant Professor, Department of Global Health, University of Washington



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**Centre for Health and Social Justice**

Basement of Young Women's Hostel No.2 (Near Bank of India)  
Avenue 21, G Block, Saket, New Delhi - 110 017.

Phone: 91-11-26535203, 26511425 Telefax: 91-11-26536041

Email: [chs@chs.org](mailto:chs@chs.org)

Website: [www.chs.org](http://www.chs.org)

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## INTRODUCTION

An article by noted economist Amartya Sen, *More Than 100 Million Women Are Missing* (New York Review Books, 1990), immediately drew the world's attention to the issue of sex ratios of populations in different countries. Sen asserted that contrary to the popular belief in Western countries 'that women make up a majority of the world's population', in countries of South and West Asia and in China, assuming the same ratio between the sexes as in western countries, a total of nearly 100 million women were missing. Sen's contention was that this big difference in numbers was not a result of poverty or lack of economic development, but due to lack of care of women. This was soon corroborated by eminent demographer Ansley Coale (Coale 1991), who revised Sen's estimates down to 60 million, but confirmed the phenomenon and explained it through excess of female mortality. Sen's article is relevant to this day not only for the concern it drew to the simple numeric of the 'sex ratio' and its complex relationship with social, economic, and cultural issues concerning women, but for stimulating scholarship and public policy action on the issue. Twenty years later, while many things have changed, the overall problem of skewed sex ratio in different populations remains a continuing matter of concern. The situation however has become more complicated in the intervening years, moving the issue from a relatively non-controversial developmental plane of poverty and female 'neglect' to a contest between individual autonomy, social desirability and human rights violation.

This paper will trace both the developments on the issue of sex ratio changes and sex-selective abortion in different countries, and the rights discourse around it. It will briefly describe the nature of, reasons behind, and public and policy responses to the problem of changing sex ratios in Asia, especially in three countries where it has been seen the most: China, India and South Korea. It will specifically explore the role and responses to sex-selective abortion in these countries. The paper will also explore international human rights and legal positions, as well as various country level laws around sex selective abortions and other mechanisms for sex selection. The paper will further examine the ethical dimensions of the issue and arguments that various experts have placed on record. Hopefully the paper will be able to contribute to a nuanced understanding on the issue and to future policy action that firmly upholds women's equal rights as well as their reproductive choices.



# FEMALE DEFICIT AND SEX-SELECTIVE ABORTIONS IN ASIA

## i. Introduction

In modern societies, the number of males born is slightly in excess of the number of females born, but this slight numerical advantage of males is followed by a higher survival rate among girl children, thereby balancing the sex ratio in childhood. It has been observed that where females and males have exposure to similar nutrition and health care, males tend to have higher mortality, with the result that the overall population sex ratios tend to be in favour of females. However, large differences in sex ratio of the populations, favouring men, were noted in the 1980s for many countries in Asia, particularly in South Asia and China. Sen, as has been noted earlier, coined the term 'missing women' for this phenomenon of skewed sex ratios where the number of males outnumbered those of females. However, the deficit of women in India had been noted from the very first census (in 1901), and this figure has more or less continually increased over the years.

In the past there were speculations that undercounting of women was perhaps one of the important causes of this deficit, but studies established that differences in mortality between males and females were also important contributors to the widening gap.

Studies from Northwestern India first drew attention to the fact of widespread infanticide and neglect of daughters leading to early mortality (Miller 1981). Later studies from Southern India (George 1992) as well as Pakistan (Coale 1991, Sathar, 1994; Karim, 1994) and Bangladesh (Coale 1991, Chaudhury, 1994; Alam and Bairagi, 1994) confirmed the phenomenon in other South Asian settings. The deficit of females in India has been noted from the first census (in 1901), and this figure has more or less continually increased over the years. Large differences in sex ratio were also observed from China, South Korea and Taiwan, however in slightly different circumstances, i.e. in much better socio-economic circumstances, and in the context of a drastic fertility decline.

Deeply entrenched patriarchal practices, linked with issues of inheritance, lineage, old age security and 'son preference' have now emerged as crucial factors leading to this situation. The introduction of foetal screening technologies in several Asian countries during the 1970s enabled determination of the sex of the unborn foetus. This was combined with abortion which was easily available, making it possible for couples who wanted a son to selectively abort female fetuses (Westley and Choe, 2007).

## ii. Asia and its Male Majority

With an overall sex ratio close to 105 (number of men per 100 women in the overall population) throughout the period between 1950 until 2005, Asia had the highest proportion of males in the world. Table 1 shows that while the proportion of men in countries in other parts of the world showed a diminishing trend owing to increase in life expectancy of women, the reverse happened in Asia.

If the population of Asia had the same sex ratio as other regions in the world, there would have been 163 million women more in the year 2005 than what was reported at that time. This deficit of women was seen to be more acute among children. Sex ratio at birth was seen to be particularly skewed in some countries, and more so at higher birth orders (Guilmoto, 2010).

Unless manipulated, sex ratios at birth have been seen to be reasonably consistent across different population groups.



Many socio-demographic factors have been studied for their influence on sex ratio at birth, and other than an influence of war, which has been found to cause a small but significant increase in male births (the reason for this is not yet explained satisfactorily), no other factors show much influence (Hesketh and Xing 2006). However, the decline in the number of girls being born has now been documented from many countries in Asia, including China, India, South Korea, Vietnam and others. Table 2 shows the number of women missing for selected Asian countries (Klassen and Wink 2002).

Son preference is seen to exist across much of Asia, and from the East to the Middle East/ West Asia, via South Asia and extending up to North Africa. But it has been seen to affect sex ratio in significant ways only recently. Earlier sex ratios in Asia were higher but stable but in recent times, changes have been observed in the sex ratio among children and also in the sex ratio at birth. While the natural sex ratio at birth is

seen to be between 104 and 106, it has been seen to be as high as 152 in the case of second births in China (Guilmoto 2010) in over 200 among mothers in South Korea in the 1990s who had more than three children. This increase in sex ratio at birth (in favour of the male) is a relatively recent phenomenon, with changes starting to show in East and South Asia from the 1980's. It is linked to the introduction of sex detection technologies of amniocentesis and ultrasound, which led to parents identifying the sex of the foetus and to selective abortion of the female foetus. It is estimated from 1990 census data for South Korea that nearly 80,000 female foetuses were aborted between 1986 and 1990 for purposes of sex selection (Westley 1995). In China and India, the figures reported are much higher, with reports claiming that it may be as high as 10 million in two decades (Jha et al 2006). It is pertinent to note that currently South Korean sex ratio at birth has reverted to normal levels, and this will be discussed later.

**Table 1: Sex-ratio of the Total Population (Males per 100 Females; Year 1950 to 2010)**

Year	Asia			Europe			South America	Africa	World
	India	China	Korea	UK	Germany	France	Brazil	Zimbabwe	
1950	105.4	107.5	99.2	92.6	85.6	93.9	98.4	98.4	99.6
1960	107.1	107.8	100.5	93.4	86.6	94.1	99.4	99.4	100.4
1970	107.9	106.9	100.5	94.3	89.8	94.6	99.7	99.7	100.8
1980	107.9	106.6	100.3	94.7	90.8	95.3	99.5	99.5	101.1
1990	107.7	106.6	100.3	94.5	93	94.2	98.7	98.7	101.5
2000	107.6	106.8	100.7	95	95.2	92.6	97.8	97.8	101.5
2010	107.2	107.4	99	96.8	96.1	93.6	97	97.1	101.6

**Source:** World Population Prospects: The 2012 Revision; United Nations Population Division, Department of Economic and Social Affairs

**Table 2: Population Sex-ratios (Males per Females) and Estimates of Deficits of Females, Selected Countries, 1979-1991 and Around 2000**

1979-1991					Around 2000				
Country	Year	Sex ratio	Deficit of Females		Country	Year	Sex-ratio	Deficit of Females	
			No. (Millions)	%				No. (Millions)	%
China	1990	1.060	34.6	6.3	China	2000	1.067	40.9	6.7
Taiwan	1990	1.071	0.7	7.3	Taiwan	1999	1.049	0.5	4.7
India	1991	1.079	38.4	9.4	India	2001	1.072	39.1	7.9
Pakistan	1981	1.105	4.3	10.8	Pakistan	1998	1.081	4.9	7.8
Bangladesh	1981	1.064	4.6	8.9	Bangladesh	2001	1.038	3.7	6.9
Nepal	1981	1.050	0.6	7.7	Nepal	2001	0.997	0.1	0.5
West Asia	1985	1.073	3.9	7.1	West Asia	2000	1.043	3.8	4.2
Afghanistan	1979	1.059	0.6	9.7	Afghanistan	2000	1.054	1.0	9.3
Egypt	1986	1.049	1.2	5.1	Egypt	1996	1.048	1.3	4.5
Total			88.9	7.7	Total			95.2	6.9

**Source:** Klassen and Wink (2002)



### iii. Son Preference and Sex-Selective Abortions

While sex detection technologies are definitely one factor responsible for sex selective abortions and subsequent decline in the number of females born, these technologies by themselves are not responsible for female deficit or changes in sex ratio. This phenomenon is the result of a number of different situations that have come together in these countries, and include:

- Son preference;
- Decline in fertility as a result of couple's own aspirations and state policies encouraging fertility reduction;
- Reduction in infant and child mortality

Son preference is an important component of gender inequality that is present in many Asian countries. Some of the reasons for son preference are:

- Patriliney (family line is maintained through sons), where sons not only continue to stay with parents but also assume old age responsibility of parents;
- Higher wage earning capacity of men, especially in agricultural societies;
- Traditions of inheritance, ancestor worship, death rites, etc.

Son preference can result in discrimination against the girl child through neglect or even infanticide, leading to high female mortality and higher sex ratio in favour of males. However, it is important to note that it is only with reduction of childhood mortality (including female mortality) and reduction in fertility that son preference creates a squeeze on desirability of female births, accentuating daughter discrimination. In other terms it means that deficit in the number of girls born expresses itself only after 'desirable' features of development start manifesting themselves, i.e. improved health outcomes and reduced fertility rates. In Asia, improved public health measures have led to reductions in childhood mortality, and many countries have started family planning programmes promoting smaller families. It is in this context that the new technologies of amniocentesis and ultrasound provided parents an option to balance the sex ratio of their children in a desired direction – i.e. have small families with at least one son, prenatal sex screening and sex selective abortions leading to changing sex ratio, especially in higher order births.

While female deficit is common across the region, it is not uniform. China and India are both large countries with substantial cultural and socioeconomic variations. Examination of data shows that this phenomenon is more common in some regions and less so in others. Thus in China, all provinces other than Tibet and Xinjiang show high sex ratios, and this is also the case in the states of Punjab, Haryana, Gujarat, Rajasthan and Maharashtra. This shows that even in neighbouring regions there can be social and cultural differences, as well as differences in economic circumstance and technological access, that affect sex selection. While this is a heartening fact for those who see son preference as a negative social attitude, it is equally true that the practice of sex selection is not only intensifying within locations, but spreading across regions as well (Guilomoto 2010, Agnihotri 2000).

In order to understand how the mechanisms of patriarchy and patrilineal social systems influence son preference and ultimately the practice of sex selective abortions, Monica Dasgupta (2009) has done a detailed analysis of the different circumstances existing across India, China and South Korea. Dasgupta asserts that patrilineal systems (which are common elsewhere as well) need to be further elaborated through very rigid kinship relationships that lead to political power and authority to be vested in patrilineages. This leads to men being organised into clans and sub-clans, strictly exogamous marriage (marriage outside clans), and women losing all contact with their natal families once married. This kind of arrangement is common to Northwestern India, China and Korea. Dasgupta compares these traditions to the more relaxed 'bilateral' kinship relations existing in other parts of Asia and India, where after marriage both bride and groom relate to both families, and daughters continue to maintain a relationship with their natal families. In West Africa, where patrilineal kinship relations are as strict, the situation is ameliorated, with women having greater economic autonomy. In North Africa and the Middle East, intermarriage between cousins



reduces distance between families. In Muslim cultures, not only is marriage within cousins permissible, but women also have inheritance rights, reducing such rigid patrilineages.

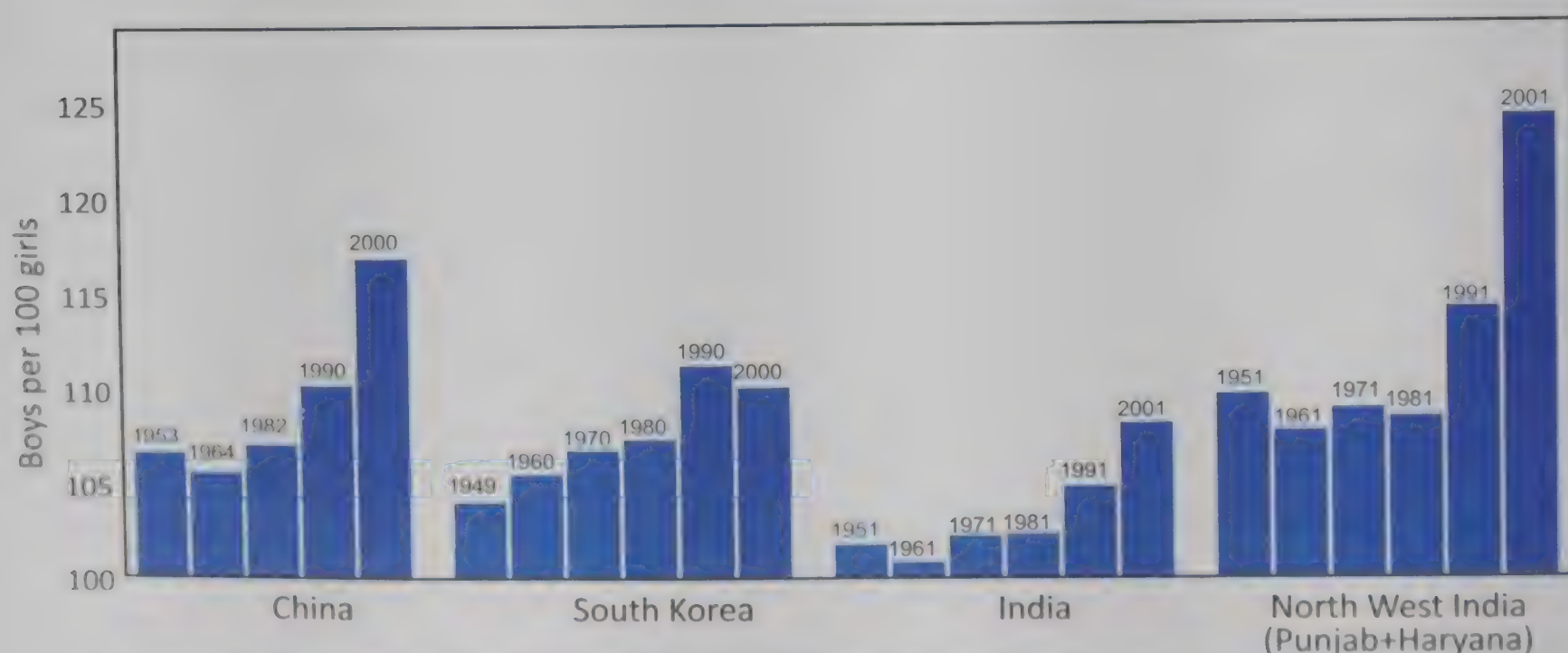
Historical Confucian traditions provide the cultural background in China and Korea, whereas a unique Jat tradition forms the backdrop in India. In China, Mao had sought to destroy these lineages and rituals, but after his death, especially in order to encourage overseas Chinese to invest locally, family ties and linkages were re-emphasised. In Korea, ancestor worship was encouraged and patrilineal traditions were legitimised after independence through the Civil Code in 1958, where only men could be noted as heads of household.

Other scholars like Croll (2002) advise that terms like 'son preference' and 'abnormal sex ratios' remove the focus from the key phenomenon of daughter discrimination. She says that it is this discrimination which leads to son preference, both in conditions of poverty and high fertility as well as those situations where economic development and demographic transitions have taken place. She points to the fact that despite higher levels of literacy and work participation among women in East Asia, sex ratios continued to become adverse, and that despite having sons, educated mothers in North India did not want to have daughters (Croll 2002). The reduction in fertility and family size has sharply exacerbated the phenomenon. Dasgupta (2009) also notes that aversion to raising daughters is sharpened in times of resource crunch such as war, famine and fertility decline. Rapid fertility decline, whether coerced as in the case of the "one-child policy" of China, voluntary as in Korea, or due to mixed circumstances as in India, coupled with easily available technology (ultrasound) and economic growth, together contributed to the significant shift of gendered sex-selection practices from female infanticide and daughter neglect to sex selective abortions.

#### iv. Country Level Scenarios of Changing Sex Ratios in Asia

The focused attention on the decline in sex ratios has led to changes in laws around abortion and sex selection. However, at the same time these countries are undergoing very dynamic socioeconomic changes. In Korea these socioeconomic and political changes have actually resulted in a reversal of the decline in the birth of girls, giving hope that similar changes may be possible in the near future in India and China as well. In this section, the country level scenarios in these three countries will be explored to identify key steps taken in these countries.

**Graph 1: Juvenile Sex Ratio (0-6 Years for India and 0-4 Years for Other Countries)**



NOTES: The numbers above the bars indicate the year in which the census was taken. The data for India are for the age group 0-6.

Source: Chung and Dasgupta (2007)



**China** – In 2005 in China, 123 boys were born for every 100 girls born (Xinhua 2006), and this figure has been rising since 1982, when it was at the level considered normal, i.e., 106 (Li 2007). Historically the overall population sex ratio in China had been favourable towards men from 1930s; however, from then on this difference continued to decline till 1978. Excess mortality among girl children, high in the 1950's, declined by the 1970s (Banister 2004). Sex ratio at birth was seen to be around 106 (males for 100 females) in the 60's and 70's, but started showing an increase during the eighties. The changes in China's sex ratio can be seen in the context of the political and economic changes that took place in this period. In 1949 Chairman Mao Zedong established the People's Republic of China. In the same year 'foot binding'<sup>1</sup> was forbidden and other steps for the empowerment of women were started. Following the death of Mao in 1976 and the emergence of Deng Xiaoping, a radical shift in Chinese economic policies as well as demographic policies began. In the quest for economic growth, education was increasingly privatised and the earlier public efforts at literacy were withdrawn (Li and Lavelly 2003, Chakrabarti 1998). With declining collectivisation, which also marked a move toward family based farming where men were seen as more important, the pre-existing son preference within a patriarchal system among the Han Chinese became more evident (Thorburg 2005). It was within this context that the one-child policy was introduced in 1979. At the same time, sex detection technologies were becoming easily available, with China starting to manufacture the ultrasound machine in 1979 (Junhong 2001).

Traditional society in China was male-dominated. Binding of women's feet was a symbol of women's constrained position in society (Worden et al 1987). Son preference is still common, and once a daughter is married she is no longer considered a member of the family. The birth of a boy is celebrated more lavishly, and being the mother of a son is also more prestigious. However, there is no dowry, and the son's family pays the costs of marriage (Junhong 2001). There were also reports of female infanticide and abandonment of female infants earlier. The Communist revolution was responsible for reorganisation of farming and of family norms. Collectives allowed women to participate in the workforce. Traditional religion was suppressed. Son preference may have declined during this period. However, subsequent economic reforms have revived son preference. Reforms reduced social security and increased the need to establish economic security at the level of the family, which favoured men, and the revival of Confucian gender ideology reinforced women's subordinate roles (Li and Lavelly 2003).

Abortion was legalised in China in 1957, but it was not until the one-child policy that abortions became common. Once sex detection technology was easily available, abortion became more widespread (Kaz 2010). Concerned about the use of ultrasound for sex detection purposes, an order prohibiting prenatal sex determination was circulated by the Family Planning Commission and the Bureau of Health of the Beijing Municipality in 1986. This was reinforced from time to time through additional notices in 1989 and 1993, but in the presence of persistent son preference and 'back-door' services, it became difficult to regulate the practice of sex detection. The government also relaxed its one child policy to permit a second child for couples who had a girl (Junhong 2001). Junhong's study of 820 women in rural Central China found that 36% of all abortions were sex selective. While recommending stronger regulation against prenatal sex determination, Junhong feels that it is difficult to prosecute providers "who need only to smile or frown to indicate the sex of the foetus". Junhong argues that coercive population policies are not necessarily a reason behind this phenomenon; rather, it is son preference coupled with the easy access to sex determination and abortion technologies.

The role of sex-selective abortions is reinforced by other authors. In Zhu and Hesketh's analysis, only one variant of the one-child policy, where second children were permitted only if the first child was a girl, was found to be associated with higher male excess (2009).

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<sup>1</sup> The custom of applying painfully tight binding to the feet of young girls to prevent further growth, bound feet became a mark of beauty and was also a prerequisite for finding a husband



Table 4 shows some of the policies for the advancement of women in China.

Table 4: Laws and Regulations Addressing Changes in Sex Ratio	
Laws and regulations to promote gender equality	Regulations against prenatal sex determination and sex-selective abortion
Constitution of the People’s Republic of China (1982)	Law of the People’s Republic of China on Maternal and Infant Health Care (1994)
Stipulation of Labour of Woman Staff (1988)	Stipulations on Family Planning Technical Services (2001)
Law of the People’s Republic of China on the Protection of Rights and Interests of Women (1992, 2005 revised)	Population and Family Planning Law of the People’s Republic of China (2002)
Compulsory Education Law of the People’s Republic of China (1986)	Stipulation on Forbidding Non-medical Aimed Foetus Sex Determination and Sex-selective Abortion (2003)
Law of Succession of the People’s Republic of China (1985)	Decision of the Central Committee of the Communist Party of China and the State Council on Fully Enhancing Population and Family Planning Programme and Comprehensively Addressing Population Issues (2006)
Marriage Laws of the People’s Republic of China (1950, 1981, 2006 revised)	

In the year 2000, the Chinese government launched a campaign to address the issue of sex ratio by addressing the issue of the girl child. This campaign included the “Chaohu Experimental Zone Improving Girl-Child Survival” and the “Care for Girls” campaign. Under the Chaohu experiment, alongside social and economic interventions like training, group meetings with mothers-in-law and economic activities for women, those found practicing selection and infanticide were punished. The Care for Girls campaign was initially piloted in 24 counties and then scaled up across the country. Civil society organisations like All China Women’s Forum and Population, Family Planning Association, Universities and mass media were involved in these efforts (Li, 2007).

There are some recent reports indicating that the Government of China’s efforts focussing on the girl child are having some positive effects and couples are accepting single daughter families. Some of the reasons behind the changes in fertility choices noted by Zhang are (Zhang, 2007):

- New attitudes towards child rearing as a means of old age support: not only are children living farther away from parents, but older parents no longer consider their children dependable. Older people are now more self-reliant.
- Changing meaning and practice of filial piety: with fewer daughters due to the restriction on family size, families are realising the value of daughters. In the new economic regime, daughters are equally able to find opportunities, sometimes even getting an advantage.
- New standards of good parenthood: parents are investing more in their children’s education to equip them to become part of the industrialisation process.

It also appears from her description of the responses of parents from her study area that the rural community appears to have ‘internalised’ the government’s messages over the years. While noting the impact of neo-liberal processes on parenting beliefs and practices, the author also cautions of the increasing rural-urban divide in China. Zhu and Hesketh, while acknowledging changes in some provinces as a result of the ‘care for girls’ campaign, conclude that the worsening of sex ratios will continue for the next two decades (Zhu and Hesketh 2009).

**India** - Female infanticide was a long standing practice in India. The British enacted a law in 1870, entitled the Female Infanticide Act, to stop this practice. They had shown an interest since the 1780’s when it was noted that the Rajkumars of Benares Division selectively killed girl children in order to avoid expensive marriages. By the 1840’s, dowries were linked with impoverishment of landed Rajputs and were an important reason for increasing female infanticide. It has been mentioned that their concern about infanticide was a part of their civilising mission in India



(Kasturi 2000). Initially the problem of infanticide was believed to be restricted to northern and north western India, but later it was shown to exist in southern India as well (George S et al. 1992). A slew of scholarship in the 1980's and 90's established the different ways in which gender discrimination and son preference manifested itself in different parts of India, and the possible reasons (Miller 1981, Dasgupta 1987, Arnold et al. 2002).

Table 5 shows the overall sex ratio in India. At the beginning of the 20th century the

Table 5: Year Wise Distribution of Sex Ratio in India												
Year	1901	1911	1921	1931	1941	1951	1961	1971	1981	1991	2001	2011
Sex Ratio	972	964	955	950	945	946	941	930	934	927	933	940

overall sex ratio was 972 women for 1000 men in 1901, which declined to 933 women for 1000 men in 2001, with a small rise in 1981.

The child sex ratio in India declined from 976 girls for 1000 boys in 1961, to 945 in 1991, to 927 in 2001 (Garg and Nath 2008). The clarion call for concern was raised after the 2001 census, when this decline in the sex ratio of children was noted and a very steep decline was found in some states. In the states of Haryana, Punjab, Gujarat and Himachal Pradesh a decline of over 50 points was noted in the intervening decade. Incidentally, the protocol for reporting sex ratio in India is the reverse of the general norm (number of men for 100 or 1000 women), and thus in India, the problem of changing sex ratio is commonly called 'declining sex ratio' or adverse sex ratio.

Abortion was legalised in India in 1971 through the Medical Termination of Pregnancy Act (MTP) 1971, and though it has some restrictions, in practical terms it provides services on demand and is widely used in cases of unwanted pregnancies. Since family planning and population control were part of its principal objectives, it was not surprising that when amniocentesis first became available at the All India Institute of Medical Sciences (AIIMS), it was actively encouraged for sex determination and subsequent abortion of the female foetus, in keeping with the government's policy for small family size. When the Indian Council of Medical Research stopped the AIIMS tests, an establishment called New Bhandaris' Antenatal Sex Determination Clinic started operating out of Amritsar in the state of Punjab, and it advertised its services widely (Mazumdar 1993). Advertisements for sex determination tests and sex selective abortions became common in India with slogans like "Pay 5000 today and save 5 lakh tomorrow".

A hospital based study of 700 cases of screening of sex between 1976-77 found that 430 of 450 female identifications were followed by MTP, while MTP was not done for even one of the 250 male foetuses identified (Ramanamma and Bambawale 1980). A hospital based study from Delhi (Sahni et al. 2008) analysing sex ratio at birth over one hundred and ten years (and larger samples since 1930's) concluded that there was a statistically significant downward shift in sex ratio at birth from 1980. Up until 1979 the sex ratio at birth was seen to be around 935 (CI 906-967), but then this declined to 892 (CI 868-918) for the subsequent years, corresponding to the easy availability of sex detection technology on the market.

The civil society response to sex selective abortions started with the first meeting on the topic taking place in 1982 in Delhi. The Forum Against Sex Determination and Sex Pre-Selection (FASDSP), a coalition of feminist and human rights groups, was formed in Mumbai in 1985. It was noted that in Mumbai between 1982 and 1987, the number of clinics for sex determination increased from less than 10 to 248. A study conducted by Kulkarni (1986) in Mumbai found that gynaecologists were routinely carrying out sex determination tests. Others noted that these practices were also taking place in smaller

Table 6: Child Sex Ratio - Number of Female Children per 1000 Male Children (0-6 years)				
Country/State	1981	1991	2001	2011
India	962	945	927	914
Kerala	970	958	960	959
Himachal	971	951	896	906
Haryana	902	879	819	830
Punjab	908	875	798	846
Rajasthan	954	916	909	883
Maharashtra	956	946	913	883
Gujarat	947	828	883	886
Source: Census of India, over a different census enumeration				



towns (Ravindra 1986). As a result of the sustained advocacy of civil society groups in Maharashtra, the state passed a law banning the practice of sex selection (or sex determination, as it is called in India) in 1988. Soon four other states followed with their state laws: Punjab, Haryana, Gujarat and Rajasthan. The problem of sex determination continued to be highlighted through academic writing as well as civil society action drawing attention to the issue, and a national law was passed in 1994 (Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) or PNDT Act). This law called for registration of all prenatal diagnostic centres (including ultrasound clinics) as well as the prohibition of sex determination in such clinics (Lingam 1998). Despite an explicit national law, there were hardly any steps taken at the state level to implement the law, including the registration of genetic clinics. This led civil society to challenge the Government of India in the Supreme Court (CEHAT and others vs. Govt of India 2000). The Supreme Court through its orders started prodding the states to take action. Around the same time the provisional results of the 2001 Census were announced, and this revealed that there had been a sharp decline in sex ratio among children aged 0-6 years.



A poster against female foeticide

In some ways the contemporaneous nature of these two incidents allowed for an intensification of the advocacy against sex-selective abortion, supported by increased scholarship into the issue. International agencies like UNFPA, UNICEF, and World Bank have played an important role in the advocacy against sex-selective abortions. The National Women's Commission, in partnership with UNICEF and the Indian Medical Association, convened a very high profile meeting with religious leaders (National Convention of Religious Leaders for the Abolition of Female Foeticide and Infanticide) in 2006. Some of the messages and approaches employed by civil society and others, and their implications, are discussed later in this paper.

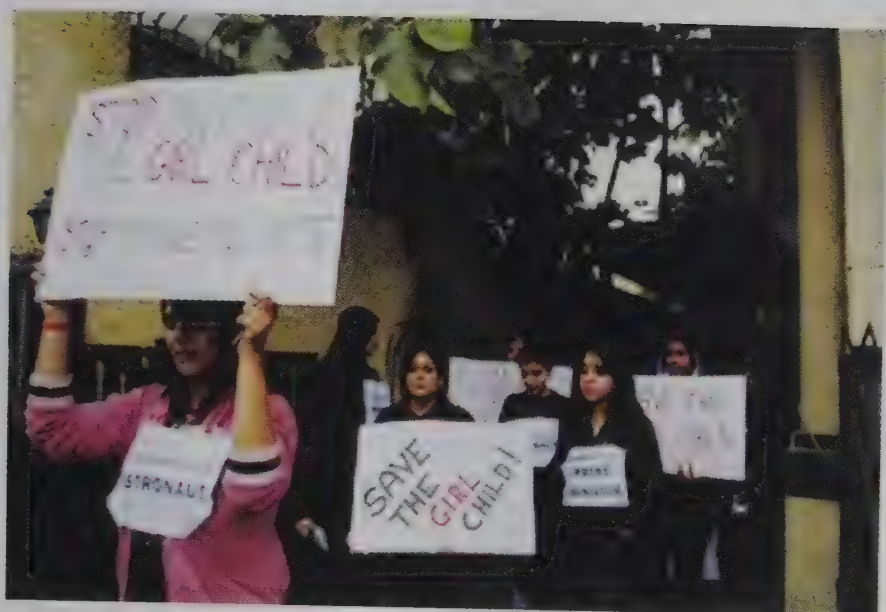
Other Government efforts include launching the 'Save the Girl Child' campaign by the Ministry of Health and Family Welfare in partnership with the Ministry of Women and Child Development in 2001. The PNDT Act was amended in 2002 to include various preconception technologies (PCPNDT Act 2002). Various states have taken initiatives like *Dikri Bachao* campaign of Gujarat, Girl Child Protection Scheme of Tamil Nadu, *Devi Rupak* Scheme of Haryana, *Ladli* campaign of Delhi, and the scheme for cash incentives to Panchayats for improving the village sex ratio of Punjab (Prime Minister's address on the occasion of inaugurating the Save the Girl Child campaign).

While declining sex ratios and sex-selective abortions continued to be highlighted as important policy issues, overall access to abortion remains a crucial health rights concern among women's health advocates. India had the highest maternal mortality rates with over 70,000 maternal deaths every year (RGI 2008), and unsafe abortion contributed 12% to this figure. Despite legislation for MTP, there were more illegal abortions being conducted in India than legal ones. Most private formal abortion providers are not registered according to the provisions of the law. While 73% of the abortions in the country are conducted in the first trimester, women acknowledge the pressure to undergo sex



Banner used in a rally in Coimbatore





Save the girl child campaign in Delhi

selective abortions (Duggal and Ramachandran 2004). Studies have shown that there is little awareness that abortion is legal, whereas messages and images about sex-selective abortions have received wide publicity (Nidadavolu and Bracken 2006).

The campaign against declining sex ratio is often located within a 'female foeticide' and 'violence against women' paradigm. This unconsciously strengthens the logic that declining sex ratio is linked with violence against individual women, and these individual women are eliminated through female foeticide and abortion. There is constant use of the expressions 'female foeticide' and 'save the girl child',

giving 'personhood' to a fetus in campaigns. In Rajasthan and in Odisha the news and images of females have been used for focusing public attention on the issue, unwittingly drawing negative attention to abortion as well. The conflation of sex-selection with physical violence is most extreme when in the India Shadow Report to CEDAW it is claimed that "The most recent method of exterminating girls that is on offer is sex-selective conception". The report further goes on to justify extermination linking persecution of women as a class and sex-selective abortion of female fetus. At a practical level the confusion between intention and practice is examined through the analysis of a street play conducted by a feminist group in Vadodara (Garlough 2008). The author examines their performance and their key message "I am your daughter, I am a human being... will you kill humanity" and expresses her reservations that the messaging comes very close to delegitimising abortion. The abortion focused campaigns in India have also allowed international pro-life anti abortion advocates to blur issues; for example, a large demonstration in Coimbatore in July 2009 had the banner "Discrimination against the Girl Child leads to Abortion" (Lifesitenews.com).

On August 1, 2010 a mini-marathon was organised by a faith-based organisation in Bangalore to strengthen a campaign against abortion. The efforts to engage the religious community in this effort have led many to articulate abortion as a "crime", and this includes religious leaders from different religious persuasions. While there is no clear evidence of restrictions on abortions in India, there are clear signs that the lines between abortion and sex-selection are getting blurred. Early reports indicate that doctors are hesitating to conduct second trimester abortions (Dalvie 2008) and religious agencies may be exploiting the confusion to push their pro-life agendas.

One key strategy that has been adopted by many agencies in India is the 'sting' operation<sup>2</sup>. In one high profile case, a TV channel conducted such a sting operation on a large number of doctors and aired these as a serial called "Kokh me katl" which loosely translates into "murder in the womb", clearly providing a negative message around abortion. However, the TV channel-promoted sting operation did lead to the state government of Rajasthan issuing restraining directions against the doctors. Till recently there was only one conviction under the law; however, news from the state of Haryana also indicates that the state Government has prosecuted 23 doctors for violating the PCPNDT Act in 2010. There continue to be many cases which have been filed in different states in India that are yet to be prosecuted.

**South Korea** – The Korean story provides some interesting differences from the Chinese and Indian experiences. South Korea is a small country and, like China, has a strong Confucian background with patriliney and ancestor worship. Korea has undergone dramatic economic growth and decline in fertility, and is now classified among the developed countries. It reached replacement fertility in 1983, and currently has among the lowest fertility rates in

<sup>2</sup> In sting operation a 'decoy' woman goes and requests a service for sex selection from a provider. The entire interaction is taped by a hidden camera and then this documentation is used for prosecuting the health care provider.



the world (1.08 in 2005). The rapid decline in fertility was also accompanied by changes in women's education rate and increased age at marriage (Choe and Park 2006). Abortion is considered to have played an important role in the decline in fertility rates, despite the high levels of contraception and a restrictive abortion regime (Choe and Kim 2007). Sex-selective abortion has been widely practiced in Korea (Chun and Dasgupta 2009) and is considered to be responsible for large excesses in male children at birth.

Sex ratio at birth in South Korea has historically shown an interesting variation along with the Year of Horse of the Chinese calendar. According to the Chinese zodiac, children born in the year of the Horse are independent and rebellious, characteristics considered particularly troublesome in daughters (Lee and Paik 2006). Despite abortion being illegal, Korean authorities have condoned abortion for family planning purposes (Chun and Dasgupta 2009). In 1990, the estimated average number of abortions for married women throughout their lifetime was 1.9 times higher than the estimated lifetime number of live births, which was 1.6 (Westley, 1995).

The changes in sex ratio in Korea can be seen as associated with the alternate reinforcement and dilution of patriarchal values in state policies. Between the 1950s and the establishment of democracy in 1987, the Korean military regime sought to reinforce Confucian traditions in order to maintain social and political stability. The Korean Civil Code of 1958 reinforced that family headship (hoju) must be held by men in the line of the eldest son, and that inheritance should be through the male line. Candidates for government jobs had to be of the right lineage (yangban), and sons and grandsons of widows who had remarried were not allowed to take civil service exams. These patrilineal authoritarian measures were also beneficial to the Korean business interests and the rapid economic growth process. At the same time urbanisation, industrialisation, and declining fertility have also broken many patrilineal traditions, assisted by changes in patterns of social security. Industrialisation meant that a large number of women entered the workforce. After the establishment of democracy, changes were initiated, including many changes in laws and policies relating to women (Kim 2009).

Along with changes in women's literacy there were also significant changes in women's social and economic positions through the women's participation in the mingjung movement and women's demands for change in family laws. The mingjung, or people's mass movement, was primarily a movement for democracy against the existing military regime; however, embedded within it was a yo'song haehang, or women's liberation struggle. Korean women's groups have been fighting the family headship system since the 1950's. In the 70's they organised themselves and launched the Pan-Women's Group for the Revision of the Family law. In 1989 women's organisation formed the Women's Union for Revision of Family Law. In 1997 the nationwide campaign for "using both parents' family name" caught the media's attention. These struggles were finally successful when the Korean Constitutional Court struck down the ho ju system in February 2005 (Kim 2009). Side by side there were changes in social security measures, and a universal pension scheme was started in 1999.

Today, South Korea is considered a successful example of sex ratios at birth coming back to normal. While sex ratio at birth was still a little high at 107 in 2008, it has been declining every year since 2002. Signaling that the times had finally changed, in July 2008 South Korea's top court overturned a ban on revealing sex of unborn babies that had been put in place as a protective measure in 1987. Responding to very low fertility, the South Korean family planning policies started incentivising childbirth with tax breaks, child care support, support for buying a new apartment, infertility treatment and so on, under the Saero-Maji ("new beginning") Plan for 2006-2010 (Haub 2010).

The Korean case provides an interesting example of how, along with economic changes, measures for empowerment of women, and strengthening of social security systems, it is possible to reduce son preferences within a reasonably short time span. These larger social changes have led to changes in social norms, with fewer women reporting to desire sons in 2003 compared to 1991 (Chung and Das Gupta 2007). Legal changes which provided women greater opportunities also made sons and daughters equally valuable to parents, leading to changes in intergenerational relationships. The support provided to daughters by parents have also led to married men now living with their wives' parents (Chun and Dasgupta 2009).



**A comparison of the three country experiences** - Comparing experiences across different patriarchal systems and across different countries, Dasgupta makes some pertinent observations about why the situation around male sex ratios has been so acute in China, Korea and Northwest India (Dasgupta 2009). She also provides an interesting insight into how changes have happened in Korea. According to this analysis, the nature of kinship relationships is critical in determining the value of daughters and son preference. In places where patrilineal and patrilocal traditions are reinforced with extremely limited contact of the bride with her maternal family after marriage, such practices become common, and this is found in these three areas. If we review contemporary history we find that Confucian kinship and lineage systems continued to be encouraged even under modern industrial regimes in China (after Mao) and under the military dictatorship in South Korea, and khap panchayats still exist in India’s Punjab, Haryana and Western UP. Though diffusion of the practice is happening in India, an interesting finding has been that the district in Gujarat with the lowest sex ratio in 2001 had a high concentration of persons migrated from what is now Haryana over 200 years ago. In Korea, reforms in the traditional kinship based civil code of 1958 and in women’s movements demanding more space and opportunities for women, followed by legislative reforms, have helped in combating sex ratio imbalance. Industrialisation and urbanisation has led to a majority of families becoming nuclear. Sons are now more likely to live away from parents and daughters as likely to live close to their parents after marriage, changing the imperatives and intensity of the kinship relationships.

v. Abortion Access, Laws and Changes in Sex Ratio at Birth

With the easy availability of sex detection technologies, sex-selective abortion became an easy way to maintain family size in the context of high son preference/daughter discrimination. With improved economic circumstances firmly established in South Korea, and well on their way in China and Northwestern India, intra-uterine sex determination followed by abortion has become the leading mechanism for exercising gender discriminatory reproductive choice. Legal abortion services have been available in Asian countries like India, China and Korea from before, and easy access to abortion has been coming under increasing scrutiny as a significant contributing factor for promoting son preference. However, the relationship between easy access to abortion, i.e. liberal abortion laws, and changes in sex ratio is inconsistent. If this relationship were true then changes in sex ratio would be evident in all countries where abortion laws were liberal. Conversely, strong son preference and inverse sex ratios can coexist even in the presence of strict abortion laws, as in the case of Pakistan and Afghanistan (Ganatra 2008). Thus, son preference expresses itself as declining female sex ratio irrespective of the legal regime around availability of abortion services.

In the face of overwhelming evidence of declining sex ratio and sex-selective practices, Korea, China and India have all banned sex selection. However, in China and India the practice continues. The easy availability of ultrasound technology, the commodification of health, and the unregulated nature of health services have led to unscrupulous practitioners continuing the practice despite the ban. However, the easy availability of ultrasound technology

Table 7: Laws Around Sex-Selection and Abortion in China, India and Korea		
China	Abortion is legal and widely accessible since 1953. Sex-selective abortion is banned since 1994.	Prenatal sex determination is banned since 1989. Pre implantation sex selection is also prohibited
India	Abortion is legal up to 20 weeks since 1971 under the MTP Act. Access to abortion services is not uniform, especially in rural areas.	Sex selection and preconception sex selection are prohibited since 1994 and 2002 respectively. Prosecutions under this act are rare.
South Korea	Abortion is illegal since 1953, with limited reasons for abortion services, but it is widely available.	Sex selection is prohibited since 1987. Eight doctors prosecuted in 1990 Penalties increased in 1994. Ban on informing parents about sex of the fetus overruled by court in 2008.
Source: Adapted from Ganatra 2008 and other sources		



alone does not predict more skewed sex ratios, as evidenced by the fact that South India has less skewed sex ratios despite having more technology available. Studies from Vietnam have also shown that despite increasing use of ultrasonography in pregnancy, it is not necessarily used for sex detection (Ganatra 2008). Ganatra in an earlier study has shown that 1 in 6 women who sought abortion in the city of Pune, in the western province of Maharashtra, had sought a sex determination test (Ganatra 2000).

While changes in the population sex ratio, or even the sex ratio at birth, are easy to document and describe, rates of sex determination or of abortion following sex determination are not. In the days before sex determination was illegal, advertisements for sex determination and abortion were commonly found in northern Indian provinces. Most of the estimates around sex-selective abortions are done mathematically using sex ratio at birth numbers. Experience from India also shows how difficult it is to catch offenders who reveal the sex of the foetus after ultrasound investigation using clues and symbols to avoid detection. A report from India documents ingenious ways of conveying the diagnosis: *Doctors, meanwhile, have found unique ways of bypassing the law and revealing the sex of the foetus to demanding parents. While some scribble innocuous-looking '+' (for a boy) or '-' (for a girl) signs on pieces of paper, others draw a leaf (girl) or a flower (boy), ask for a laddoo (boy) or barfi (girl), or use a specific ink colour to write with* (Infochange News and Features 2005).

With regulation of sex detection difficult and lax, the pressure has been to regulate sex-selective abortion. In China, second trimester abortion has been restricted in many places, and similar intentions have been expressed in India. In many cases providers themselves have started restricting second trimester abortions, fearing prosecution (Dalvie 2008). In China, medical abortion pills have been banned in some districts, fearing their use in sex-selective abortions, and in India there are reports that availability of drugs for second trimester abortions is restricted due to similar apprehensions (Ganatra 2008). Reviews of how the Indian campaign on skewed sex ratio was managed and the way messages were projected through the media highlights the mechanism through which distinction between access to abortion and sex selection is blurred and abortion demonized (Nidadavolu and Bracken 2006, Ganatra 2008). Nidadavolu and Bracken give some examples in their paper of the unintended consequences of the common imageries of using a foetus and knives in posters - "after seeing a government poster on punishments under the PNMT Act, one man believed the poster was useful: ...as it communicated that one should not have an abortion as it is "killing a foetus".



# SEX SELECTION, SEX-SELECTIVE ABORTIONS AND HUMAN RIGHTS: INTERNATIONAL POSITIONS AND NATIONAL LAWS

## i. Sex-Selective Technologies

Sex selection has now emerged as the more 'humane' method for realising gendered reproductive intention. It often entails the use of sophisticated and often very expensive technology, contradicting the notion that son preference and daughter discrimination are in some ways related to 'lack' of economic development, or that they may be dealt with through traditional methods of women's empowerment like improving women's educational status. Methods of prenatal sex selection are broadly divided into three categories: those where selection of sex of the foetus is done during pregnancy, where it is done before implantation of the foetus within the uterus, and finally where it is done even before conception. Amniocentesis, chorionic villus biopsy, ultrasonography and examination of blood for foetal antigens are those methods which are done once pregnancy is established and require the sex-identified foetus to be aborted for the process of selection to be complete. In the case of pre-conception selection, technology is used for separating the X and Y sperm (micro-sorting) and, having harvested the sperm, proceeding for in-vitro fertilisation with the desired sperm. In a more complex, more efficient and much more expensive method, after the process of in vitro fertilisation (resulting in many zygotes), the zygote is examined for sex chromosomes. If the sex of the zygote is found to be desirable, the zygote is implanted. This method is called Pre-implantation Genetic Diagnosis or PGD.

This elaborate introduction to the sex-selection process is necessary because current legal regimes in many countries have debated about these artificial reproductive technologies and they also allow the discussion to move beyond the limited and contested domain of abortion for the purposes of sex selection. However, before moving into hi-tech sex selection and its desirability and legalities, it is necessary to dwell upon the more emotionally charged realm of sex-selective abortions.

## ii. Abortion and Sex-Selective Abortion: International Concerns

Abortion remains a very contested issue in reproductive health, even in the twenty-first century. For most of the twentieth century (up until the mid 1960s), abortion was seen as a crime (under the influence of the Church), and only after Britain's Abortion Act of 1967 decriminalised abortions have abortion laws been liberalised around the world. According to contemporary estimates, over a quarter of the world's women live in countries (68 countries) where abortion is either illegal or only permitted in very limited situations, like saving the woman's life. On the other hand, women from 56 countries (comprising 40% of the world's population) can ask for abortion services without providing any reason. However, there are restrictions relating to gestational age which in most cases is up to the first trimester or 12-13 weeks. Women's right to abortion is often considered the most talismanic of all of women's reproductive rights and a fundamental marker of gender equality in society. This is so because it gives a woman the autonomy not only to decide about herself but also about the use of her body for a pregnancy, which is usually seen as a 'social and family good' with external claims from family, society, and not the least, of the 'unborn child'. Sex selective abortion adds an additional conceptual dilemma, pitting women's reproductive rights against gender discrimination and 'violence' (under some interpretations) against women..

International concerns about the subordinate status of women and the need to address this led to the adoption in 1979 of CEDAW (Convention on the Elimination of all forms of Discrimination Against Women), the international



treaty addressing gender discrimination. However, the international attention on violence against women started only in the 90's after General Recommendations 12 and 19 on CEDAW (1989) explicitly discussed violence against women and gender based violence. Subsequently, in June 1993 women's rights were acknowledged as integral human rights at the World Conference on Human Rights (Vienna Declaration and Program of Action, Section 3 – The equal status and human rights of women). Later in the same year the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women, expressing its unequivocal concern about the issue of violence against women.

**"Recognising the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings..."**

**"Concerned that violence against women is an obstacle to the achievement of equality, development and peace..."**

All of these initial documents concerning women's status and rights are silent on abortion and sex selection, and it is only during the International Conference on Population and Development (ICPD) at Cairo in 1994 that some form of international consensus formed on both these issues. Consensus around abortion did not happen without some sustained opposition from countries as diverse as Iran and the Holy See (the Vatican has observer status in the UN). While women's groups had continued to ask for abortion as a right, the Cairo document acknowledges the need for abortion services in the context of its health consequences and for the purposes of avoiding maternal death and morbidity.

**"...In circumstances where abortion is not against the law, such abortion should be safe. In all cases women should have access to quality services for the management of complications arising out of abortion. Post abortion counseling, education and family planning services should be offered promptly, which will also help to avoid repeat abortions (ICPD PoA 8.25)."**

Authorities like Cook and Dickens (2003) see this as an acknowledgement of the right to health of women in the case of abortion and a necessarily interim stage in the evolution of abortion as an unqualified right. Another way to view the right to abortion is to include it within women's overall human rights as stated in Paragraph 96 of the Beijing Platform for Action, "[t]he human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."

Alongside including abortion as a legitimate reproductive health issue of women, the ICPD Program of Action also noted the practice of prenatal sex selection as being discriminatory towards girl children and urged governments to take steps to prevent it. In the following year in 1995, the Platform for Action (PfA) emerging from the Beijing Conference was more explicit in dealing with sex selective practices. Prenatal sex selection was clubbed along with forced sterilisation, forced abortion and female infanticide as acts of violence against women. The Beijing PfA urged Governments to go beyond social efforts to tackle such violence and enact and enforce legislation. It is important to note that both these documents, still seen as setting some of the most definitive benchmarks on reproductive rights and gender equality, while condemning the practice of sex selection, do not call for prohibiting sex-selective abortion.

The location of prenatal sex selection within the domains of violence against women continued in the international arena with the UN Special Rapporteur on Violence against Women Radhika Coomaraswamy drawing attention to



practices like female infanticide and prenatal sex-selection in her report in 1996. The Committee on the Status of Women (CSW) during its 51st session in March 2007 linked the issue of prenatal sex selection to violation of the rights of the girl child along with female infanticide, rape, incest, early marriage, forced marriage and female genital mutilation. The UN General Assembly at its 62nd session in 2008 expressed 'deep concern' on prenatal sex selection as a form of gender discrimination. The UN Special Rapporteur on violence against women, its causes and consequences, Yasim Erturk in her critical review of the 15 year process (in 2009) makes mention of sex-selective abortion as a form of violence against women occurring in the family along with the battering, marital rape, incest, infanticide, female genital mutilation and dowry related violence. The report also mentions prenatal sex selection as a form of sexual assault on women not specifically mentioned in the Declaration on the Elimination of Violence Against Women.

Different forms of violence continued to be addressed and elaborated upon in the documents adopted in the years that followed. For instance, the Beijing Platform for Action (PFA) - by including, among its 12 critical areas of concern, VAW, along with women and armed conflict, and the human rights of women - specified various forms of sexual assault on women that were not specifically mentioned in CEDAW. These include systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilisation and forced abortion, female infanticide, and prenatal sex-selection.

From the above discussion, a trend that clearly emerges is that the international (UN) position on prenatal sex selection and sex-selective abortion has changed over the years. From being seen as a discriminatory practice against girls, it changes its label over the years and emerges as a form of sexual violence against women alongside rape and sexual slavery, a form of violence against girl children alongside early marriage and infanticide, and a form of violence within the family alongside dowry violence and wife battering. On cursory inspection these associations do not appear immediately obvious and seem somewhat stretched, especially since the woman undergoing sex-selective abortion may be doing so volitionally and the practice of prenatal sex selection may not even involve human beings but just gametes. It may thus appear that this consensus draws more from moral outrage about these practices rather than a careful consideration of human rights involved. This is possible, because UN positions are not so much developed through carefully argued theoretical considerations as much as practical, desirable and consensus policy articulations. Recent evidence indicates that this may indeed have been the case, with UNFPA issuing a guidance note in 2010 requesting a more cautious approach. But before coming to the contents of this guidance note it may be instructive to critique the UN Agencies' positions on sex-selective abortions and prenatal sex selection alluded to above.

### iii. Abortion and Sex-Selection: Human Right and Legal Positions

The history of modern human rights is embedded in the UN system. The Universal Declaration of Human Rights along with the International Covenant on Civil Political Rights and International Covenant of Economic Social and Cultural Rights comprise the International Bill of Human Rights. This forms the basic architecture for elaborating other human rights, which is an ongoing process leading to the articulation of a series of human rights treaties which countries sign on to and subsequently ratify, giving them sanctity in international law. There are nine core treaties, and these include ICERD (International Convention on the Elimination of all forms of Racial Discrimination), CEDAW, CRC (Convention for the Rights of the Child), CAT (Convention Against Torture and other forms of cruel, inhuman, or degrading treatment or punishment), CRPD (Convention on the Rights of People with Disability), and others. Each of these nine treaties has treaty monitoring bodies comprising of experts who monitor implementation and compliance of member countries who have ratified them.

Even though these treaties are considered binding international law, in most cases individuals do not have ways to approach international courts for justice, and countries have the option of stating reservations on certain provisions which they feel do not or cannot apply in their situation. Lack of appropriate justiciability mechanisms is



Table 8: Abortion criteria in countries where abortion is legal				
Countries	To save woman's life or prohibited altogether	To preserve health	Socio-economic grounds	Without restriction as to reason
Australia				
Brazil (RH)				
Canada"				
China (S)				
France				
India (PA/F/R)				
Japan (SA/R)				
Mexico				
Republic of Korea (SA/R/I/F)				
Sweden**				
UK (F)				
USA (FS)				
FS: Federal system in which abortion law is determined at state level classification reflects legal status of abortion for largest group of people; F: Abortion permitted in cases of fetal impairment; S: Sex selective abortion prohibited; PA: Parental authorization/notification required; R: Abortion permitted in cases of rape; SA: Spousal authorization required I: Abortion permitted in cases of incest **: Gestation limit 18 weeks " : Law does not indicate gestational limit, regulatory mechanism vary				
Source: <a href="http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/AbortionMap_2011.pdf">http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/AbortionMap_2011.pdf</a>				

often mentioned as a limitation of international human rights, but its power to influence domestic legislation and jurisprudence is acknowledged, and it sets common and acceptable standards for state-citizen relationships as well as individual liberty and its boundaries within the context of any particular state.

Human rights are supposed to be inherent and inalienable for all human beings, but in reality are aspirations for all in order to achieve freedom, peace and justice. A further character of human rights is that they are interrelated, interdependent and indivisible, as well as non-hierarchical. It is necessary to consider these characteristics of human rights for discussing the issues around abortion and sex-selection.

In order to further consider the concepts at hand, one needs to clarify the definitions of the terms discrimination and violence and their relationship with rights. Discrimination against women has been defined in CEDAW as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Dictionaries are more concise in their definitions. Merriam Webster defines discriminate as "to make a difference in treatment or favour on a basis other than individual merit". Violence against women is defined in the UN declaration on VAW as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."



Clearly “violence” and “discrimination” do not mean the same thing; there are clear conceptual differences even though there may be substantial areas of overlap between the two. The term discrimination is primarily related to intentionality and judgement (prejudice), whereas violence is related to consequences (negative) of suffering and harm, whether actual or likely or implied (threats). Thus, while in a large majority of situations both coexist, especially in the context of women and their subordinate position in society, it is possible to have discrimination without violence. Not sending the girl child to school while doing so for the boy child is clearly an act of discrimination, but it cannot automatically qualify as violence.

The third term that needs to be understood is human rights, and this is best understood through the examination of the Universal Declaration of Human Rights (UDHR). Article 1 of UDHR proclaims “(A)ll human beings are born free and equal in dignity and rights”, immediately limiting human rights to birth onwards, indicating that human rights do not apply to the foetus. The UDHR also specifies that these are common standard of achievement for all peoples and all nations, and since they are common for all, they also are in some ways the lowest acceptable standard. The Stanford Encyclopaedia of Philosophy defines rights as “entitlements to perform certain actions and be in a certain states”, with the choice of not doing so as well. Human rights also convey an obligation to the state to provide conditions for the individual to enjoy these rights. In order to differentiate between the core approaches of the state towards the fulfilment of human rights, they are further divided into negative and positive rights. In the case of negative rights, it is important that the state refrain from interventions, provide the person freedom to enjoy the right, and remove any restrictions and impediments to the individual’s enjoyment of the right. This applies to the case of freedom of speech, of association, to private property, and so on. Positive rights, on the other hand, require the state specifically to intervene to provide necessary conditions for all to be able to enjoy them – e.g. right to health, to education, to a minimum standard of living, and so on.

In the context of discrimination and violence, General Recommendation 19 provides an extensive list of rights that are implied. These include the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; and so on. In the case of discrimination, the focus is on the right to equality, whereas in the case of violence the focus shifts to right to life, liberty, and security of person. However, it is not easy to disentangle different rights so easily because of their inherent indivisibility and interconnectedness.

If we now look at the issues of sex selection, abortions, and sex-selective abortions in the context of rights, a complex picture emerges. Despite the complexity, the picture is less ambiguous in the case of abortions. Countries like the US and Canada through their jurisprudence have clearly established that abortion is based on the rights of the woman. In the US in the case *Roe vs. Wade* (1973), the court held that the “right of privacy” was sufficient for a woman to secure an abortion. In Canada, in the landmark case against doctors Henry Morgentaler, Leslie Frank Smoling and Robert Scott (*R vs. Morgentaler* 1988), the judges held that abortion is permissible under women’s right to liberty, bodily integrity, and security of person as well freedom of conscience and religion.

While the issue of abortion can be settled somewhat easily relating it to women’s rights, an element of confusion is created by groups who often owe their allegiances to religions opposing abortions by referring to the rights of the “unborn child”. Such groups are often called “pro-life” or “anti-choice” groups. While their claims can be dismissed under the UN system of human rights simply because rights accrue at birth, there are aberrations under other international law regimes. In the American Convention on Human Rights of 1969, it is mentioned under article 4 that the right to life is protected from the moment of conception. Significantly, countries like Brazil and Canada aren’t signatories to this treaty, and USA has not ratified it. Mexico has ratified it with reservations specifically around Article 4 and its reference to the “moment of conception”.

In the case of sex-selective abortion, the issue of concern is not abortion per se, but the discriminatory practice of selecting the female foetus in the context of widespread discrimination against women and women’s secondary



### Use of Appropriate Language for Messaging and Positioning

The language which is employed to address and discuss the issue of sex-selection is important. If in doubt, err on the side of caution. Guidance on the use of language includes:

**Human Rights:** UNFPA is working on a joint position on this issue with other UN agencies. Until that is ready, the following is UNFPA's guidance:

- Avoid any language which assigns the rights of personhood to the foetus - thus, avoid the terms "feticide", or describing prenatal sex-selection as "violence against women" (implying that the foetus is a woman).
- If helpful, refer to the human rights concerns which are related to sex-selection (e.g. gender inequalities in general, or specific cases such as women who are forced to abort), or the human rights consequences that may result (e.g. trafficking, early marriage). However, do not identify sex-selection itself as a human rights abuse.
- For the time being, until we have more clarity on a joint UN position, avoid publicly discussing the human right of women to the information or technology for sex-selection. The term "third generation human rights" (referring to group rights) is used in some contexts, but should be avoided as it is not clear what this implies. As is always the case, use existing international guidance wherever possible, but avoid using the Beijing Conference definition of violence against women as including sex-selection.

(Source: UNFPA Guidance Note on Prenatal Sex-Selection)

status in society. However, the possibility of conflation of the two issues – abortion and sex selection – has been pointed out earlier with respect to the campaigns against sex selection in India, where the message against sex selection, by focusing on sex-selective abortion and female foeticide, has been shown to come up close to limiting abortion itself. One of the arguments used by some campaigners is that since abortion does not have the status of a formalised "right" in India, there is no strength in the argument that the right to abortion will be compromised by such messaging by the campaigns against female deficit in the sex ratio. In China, where abortion has been freely available, especially in the context of the one-child policy, sex-selective abortions have been banned since 1994; however, there are no penalties. In India, it is the act of sex selection that is explicitly illegal; there are very specific (though somewhat loose) conditions under which abortions are available, and sex selection is not within these conditions.

The act of sex selection, without the context of abortion, appears to be a less contentious issue. In many countries, sex selection is legal in the context of Assisted Reproductive Technologies (ARTs). However, this practice has also come under legal scrutiny, because it can imply discrimination. The act of discrimination that may be manifested in the sex-selection process links sex-selective practices to human rights concern, even though there are no directly affected individuals.

The legal position in Canada provides an interesting example for understanding the distinction between the two issues of women's autonomy and discriminatory intent. As far as abortion is concerned the position is unequivocal, with the Supreme Court having provided women the unqualified right to abortion. Here, there is no enquiry into the motivations behind seeking abortion. However, when it comes to ARTs, there is no space for sex selection for social reasons under the Assisted Human Reproduction Act of 2004.

In contrast, there are no laws around sex selection in US, and abortion being legal, sex-selective abortions are also legal. Moving across the Pacific Ocean, in Australia it is found that abortion is available under health and socioeconomic grounds even though laws differ between states. However, sex selection is prohibited in all states under the National Health and Medical Research guidelines of 2004. These state that "Sex-selection is an ethically controversial issue. The Australian Health Ethics Committee believes that admission to life should not be conditional upon a child being a particular sex. Therefore, pending further community discussion, sex-selection (by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition...". In Japan, abortion was made illegal soon after its contact with the Western world in 1868. However, after the 2nd World War in 1948 abortion was legalised for maternal health considerations. As far as sex selection was concerned, in the



mid-1980's a method known as Percoll method was being used by Japanese gynecologists for sperm separation, but in the 1994, the Japanese Society of Obstetricians and Gynecologists prohibited the use of this method. However, the key demographic concern in present times in Japan is its very low birth rate rather than its sex ratio (Mori and Watanabe 2002).

In Britain, abortion is available under the Abortion Act of 1967, which was amended in 1990, making abortion legal until 24 weeks if "the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family". British law requires two doctors to certify before the abortion can be carried out. In the case of sex selection, the Human Fertilisation and Embryology Authority prohibits any sex-selective practice for social reasons in the context of assisted reproductive technologies. However, the situation in Northern Ireland is different, where abortion continues to be restricted. In Europe, the Oviedo Convention on Human Rights and Biomedicine (1997), an International Convention under the Council of Europe, makes sex selection for non-medical purposes an undesirable practice:

**Article 14 – Non-selection of sex** *The use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided.*

In countries with unrestrictive abortion laws, sex-selective abortions are usually permissible under the existing abortion laws. According to reports in Sweden, since the abortion laws allow abortion on demand until 18 weeks, it is permissible to have sex-selective abortions. Similarly, in the Netherlands abortion is available for women until 22 weeks without giving any reason, but only asking them to wait overnight to confirm their decision.

The analysis of legal regimes around sex-selective abortions reveals no consistent pattern, but there are some noteworthy elements. In almost all countries of Western Europe, North America and Australia, abortion is legal. But even in countries like Canada or Britain or Australia, where abortions are legal under almost all conditions, there is a concern for sex selection. These countries provide interesting balance between supporting women's autonomy and addressing discrimination.

In this context, the UNFPA Guidance Note on Prenatal Sex-selection (2009) is very instructive, and in many ways also recants some earlier UN positions. Since ICPD was the first occasion where son preference, prenatal sex selection and abortion had been discussed, it was perhaps natural that UNFPA had taken the lead on this issue along with its sister agencies like WHO, UNICEF, UNIFEM and OHCHR. After discussing the causes and consequences of sex selection and skewed sex ratios, the document makes some radical departures from the past UN language and positions.

Firstly, it advises caution in associating violence against women with sex selection and points towards the possibility of providing the foetus with personhood through such association. It also advises against labeling the issue as a human rights violation (see accompanying box). The guidance note also advises against advocating for legislative measures, especially in the context of restricting abortion access, including restriction on late abortion, for fear of driving it underground. Instead it focuses on the need to focus on data, provide support for counseling of women, advocacy with providers, community leaders and technology providers, and draw attention to gender discriminatory practices within a culturally sensitive approach.

A review of the international and national legal positions around sex selection and abortions indicates two trends. First, there are an increasing number of countries, even among developed countries, which acknowledge the possibility of sex selection practices. But these countries clearly acknowledge the abortion rights of women, and in most places with liberal abortion laws, the reason or motivation is not enquired. The situation with international law is different, and here, while there is no consensus around abortion, there is a clear consensus around sex-selective abortion. From the time of ICPD (Cairo 1994), the articulation of sex-selective abortions has moved from the domain of discrimination to the domain of violence; however, very recently there has been a process of rethinking in which positions are being rearticulated. While the UN guidance note is cautionary in the use of the term 'third generation' rights in the context of sex-selection, it may actually provide a classic situation for applying this condition. In the



absence of a clear human rights dimension, the issue of sex selection remains in the domain of undesirable social practice. Articulating sex-selective practices as undesirable social practices may equate any efforts to have them addressed to the colonial 'civilising' projects of the past. It may be explicitly for the reason of highlighting the acceptability of sex selection that the women's movement has ardently campaigned against sex selection, providing it a larger than perhaps necessary profile in the rogue's gallery of human rights violations. Sex-Selective practices need to be firmly located within the domain of rights, and provide the opportunity of also evaluating the principle of choice vis a vis equality. Fundamentally, 'equality' is a stronger human rights principle than 'choice', which implies 'freedoms', which are usually constrained in the absence of equality.



## ETHICAL DIMENSIONS OF SEX-SELECTIVE ABORTIONS

The human rights dimensions of sex-selective abortions are complex and not unequivocal, though the phenomenon of skewed sex ratio that arises as a consequence is clearly undesirable and seems 'wrong'. The laws banning sex selection in different countries appear to be the 'correct' response to a problem which often appears to be a humanitarian crisis, and terms like 'femicide' and 'gendericide' are often used (perhaps deliberately) to remind one of 'genocide'. However, at the same time one is reluctant to apply terms denoting 'death' to a foetus which doesn't have independent and autonomous 'life' in any case. In such a situation, it may be instructive to explore the ethical debates around the issue and try to establish whether it is possible to identify ethical standards which could be applied consistently across different situations.

'Ethics' as defined by the Compact Oxford English Dictionary are the moral principles governing or influencing conduct. The more comprehensive Oxford English Dictionary defines it as the science of morals and the study concerned with the principles of human duty. It is in effect the study of morality or notions of right and wrong that guide action.

The issues of abortion, sex-selective abortion and sex selection have been discussed at length among bioethicists. Reporting on the discussions at a World Conference on Medicine and Law in New Delhi (1985), Dickens (1986) notes that while it may be argued that the patient may have a right to all information from a prenatal diagnosis, all information beyond that for which the test was indicated, or which has no effect on a medical decision, may be considered irrelevant as far as the patient is concerned, and need not be disclosed. In these early days of the controversy, Dickens is of the opinion that it would be sufficient for doctors to accept this as unethical practice and '(e)nforcement of professional medical ethics may be preferred to the introduction of legislation'. Subsequent developments, of course, point to how wrong this assumption proved to be.

There is considerable agreement that deliberately identifying the sex of the foetus, for non-medical reasons, and in the context of gender discrimination, is an unacceptable practice, since it can contribute to the reinforcement of gender discrimination. Even in the absence of any gender discrimination, there have been arguments that once sex selection for non medical purposes is allowed, it will soon lead to the possibilities that parents with the assistance of doctors may be asking for 'designer babies' with desired traits like height, eye colour, and so on. The Ethics Committee Report of the American Society of Reproductive Medicine (1999) takes a considered view of the issue. In a country where sex selection and sex-selective abortion are not illegal, it cautions against discriminatory practices and discourages the use of PGD for non-medical reasons. However, the Chairman of the Ethics Committee in a guidance letter in 2001 stated that for purposes of 'gender variety', sex selection was permissible.

There are other arguments that support the use of sex selection, and these are mostly in the context of parental rights and freedom of choice. Some have argued that sex selection would reduce the number of sex-selective abortions, and may even influence the reduction in the number of unwanted children and population growth, ultimately resulting in the increased value of women (LeRoy and Bartels, 2000). 'Family balancing' is a term that is often used in the context of sex selection. Experts have proposed ethical guidelines (Pennings, 1996 cited in Dickens, 2002) that sex selection should not be allowed for the first child nor when there is already a balance in a family. Dickens and colleagues (Dickens et al 2005) have argued for a distinction between 'sexist' and 'sexual'. They raise questions of whether the criminal prohibition of sex-selective abortion, in a context where gender discrimination is not established, is ethically justifiable. Individuals should have the freedom of making sexual choices, like the sex of their sexual partner, and in the absence of gendered discrimination this should extend to the sex of their children. They are also of the opinion



that criminalisation of sex-selective abortion alone, in the absence of other measures, may be insufficient, and more substantive measures for addressing discrimination against women necessary.

In a strong critique to the argument that different countries and societies should have different approaches, George argues that since gender discrimination is not equal in its intensity across the world, there is an assumption that the countries of the west are uniformly populated by 'Caucasians' (George 2006). He says that this approach not only ignores the Asian diaspora, but also provides impunity to practitioners who target these very minorities. He also cites the changing sex ratio among Chinese and Japanese Americans, and considers it the moral responsibility of the majority population to be concerned about the gender discriminatory practices among the minorities. George also makes a distinction about the position of Western ethicists in the context of the situation in India or China. In the West there are three different kinds of sex-selective practices, with their associated technologies, differing levels of medical complexity and costs, while in India or China sex-selective abortion is the only (or principle) issue under debate. In India and China, both PGD and sperm selection are not only expensive, but are not easily accessible. At the same time these technologies do not include the contentious issue of abortion. Thus, only sex-selective abortions need to be discussed in the context of autonomy and easy availability. It is easier to be ambivalent about sex-selective abortion in the West in the context of the diversity just described, but not so in the presence of the continuing and rapid changes in sex ratio at birth in India.

Indian activists and the government have taken a strong position against sex-selective abortions. In India, the term 'female foeticide' is commonly and often deliberately used to focus on gender discrimination. The term 'missing girls' is also commonly used to provide a strong moral dimension to the campaigns against 'declining sex ratio'. In an effort to draw attention to the seriousness of the problem, sex-selective abortions have been variously described as 'holocaust', 'genocide' and a 'national emergency', 'a method for exterminating girls' and a 'crime against humanity'. The position of the campaigns has also been to ignore the question of a pregnant woman's own choice in order to protect the rights of women as a group (Madhiwala, 2008). Indian activists also took the unique step of taking the Government of India to court (Cehat and Ors vs. Union of India) for not supporting the implementation of the law related to sex selection, giving a fillip to the overall campaign against sex selection. In the process of intensifying the campaign, religious leaders were invited to lead the campaign against sex selection in many places. As has been described earlier, this has led to some religious leaders confounding the issue, and speaking out against abortion in general.

A feminist analysis of the issue identifies a whole new set of dilemmas (Zillberg 2007). In a deeply discriminatory society, a woman's status may be defined by whether she is a mother of a son or a daughter; similarly, an undesired daughter, when born, may also face extreme discrimination. In such a situation, is it possible to decry a woman's choice to go in for sex-selective abortion? On the other hand, without banning sex-selective abortion, is it possible to take a strong stand against discrimination and provide a strong motivation against this practice? Enforcing prohibitory laws without addressing gender discrimination and oppression may make women more vulnerable by driving the discriminatory practices underground and into the hands of 'rogue' practitioners. In a situation where abortion is allowed for some reasons but not for sex-selective purposes, the onus may be placed on women to prove that their abortion was not sex-selective, curtailing their autonomy with regard to abortion. Zilberg (2007) concludes that legal options, like banning sex-selective abortions, in themselves are inadequate, as is seen in the case of both China and India (where the practice continues despite bans), and that it is only within the context of a strong programme for social change that legal measures may be successful.

Another possible area of confusion around sex selection are the arguments of disability rights activists around discrimination against the disabled in the context of foetal and genetic screening. The Disability Rights Commission in the UK had criticised the Abortion Act of 1967 for its provisions for allowing abortion on grounds of risk of disability, as being offensive to many persons for reinforcing negative beliefs of disability. In two recent cases around abortion



in India, the Niketa Mehta case<sup>3</sup> in the Mumbai High Court and the Nari Niketan<sup>4</sup> rape case judgement in the Supreme Court, the issue of disability was central to the decision of the courts.

Disability activist Wolbring (2005) contends that allowing distinction between ‘medical reasons’ and ‘social reasons’ for abortion and sex selection leads to an ‘animal farm philosophy’ or hierarchical standards, and ‘makes it impossible for disabled people to establish able-ism within the same human rights framework as racism, sexism, age-ism, homophobia, and other isms’. Commenting on this issue, Madhiwala (2008) is of the opinion that there are no conflicts between disability rights and women’s abortion because the foetus in question is not imbued with human rights. However, in her opinion, while a woman’s choice on whether to carry on a pregnancy or not is absolute, when a pregnancy is beyond viability the issue becomes complex, and one needs to consider the ‘rights’ of the viable ‘potential child’/foetus. The other issue that needs to be considered is that while equality is an important consideration for discussing disability, the overall approach of society is to prevent disability. Thus, wearing helmets or seat belts while driving two wheelers and cars are not only to prevent death but also disability. If a foetus, which doesn’t have rights, is revealed to have a potential disability, the principle of prevention should apply, and thus this does not cause any ethical barrier to abortion.

The examination of ethical arguments on the issue of sex selective abortion reveals a range of often-conflicting positions. The principle of non-maleficence, or ‘do no harm’, is an important concept in bioethics and seems to support a universal approach of sex selection prohibition. However, there are also the principle of ‘beneficence’ which calls for helping the patient, and the principle ‘autonomy’, indicating that the person concerned should be the best judge. On the other hand, the principles of fairness and distributive justice, and the utilitarian principle of greatest good for greatest numbers, also argue against sex selection, explaining the difficulty to reach a consensus opinion.

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<sup>3</sup> In the Niketa Mehta case, the doctor of Ms Niketa Mehta approached the court for the permission of abortion at 23 weeks. In India abortion for foetal defects is permitted till 20 weeks but in her case she claimed that the problem had been detected in the 23rd week and that she claimed mental trauma in raising a disabled infant. The court disallowed her petition.

<sup>4</sup> In the Nari Niketan case the possibility of disability was discussed and disallowed as a condition for allowing abortion by the Supreme Court.







## ISSUES AND CONCERNS

### i. Sex-Selective Abortion is a Complex and Perplexing Issue

Unfortunately we do not live in a perfect world of absolute definitions, impervious categories and infallible arguments. The current state of our knowledge and understanding about our world is the result of our incomplete efforts arrived at through imperfect methods of trying to order the overwhelming jumble of reality that confronts us in our daily lives. The phenomenon of sex selective abortion is one of those still not yet clearly understood realities, but we do not have the privilege of deliberating till the point of revelation or serendipity.

The phenomenon of sex-selective abortions is situated at the intersection of multiple planes of concerns. It is fraught with dilemmas and contradictions, which have been discussed in the earlier sections. This section will attempt to synthesise the key concerns and identify possible action points.

The drama of sex-selective abortions has a large cast and a number of perspectives and vantage points. The pregnant woman is the central character, but the question is whether she should also be the most important. What will be the defining perspective – that of rights violation, of discrimination, or of entitlement? Another important question that needs to be resolved is what the rules of engagement will be. Will it be one set of rules guiding both sex selection and abortion, or will they be different? Should there be a consistent logic across both sets of rules? How will multiple vantage points – the woman's own, and societies' cultural and ethical expectations and legal standards, be reconciled? If there are culpabilities, who will be culpable? Will it be the woman, her husband, family, society in general, the medical service provider who conducted the test or the abortion, or the medical technology provider, the government, law enforcement agencies, or greed or patriarchy or globalization?

### ii. Reasons Behind the Conflations

A comparatively easy distinction may be attempted in understanding sex selective abortion as belonging to either the domain of discrimination or that of violence. The UN position was seen to evolve from 1993 to 2009 – moving from discrimination to the most heinous forms of physical, sexual and domestic violence. In a somewhat related development, the rhetoric among Indian civil society advocates also assumes very shrill notes (genocide, gendericide, holocaust), and in the 2006 CEDAW Shadow Report two paragraphs and more are devoted to developing the idea of sex selective abortion as a crime against humanity. A pertinent objection to this line of thinking is, in the case of sex-selective abortion, where is the victim (the survivor) or the person affected?

There are possibly two reasons behind these conflations. The first is between a discriminatory practice and a deliberate act against a person, and the second between a foetus (with no personhood) and living, breathing women and girls. The first reason behind this easy slippage into a comfortable moral position was the initial terms of reference for the problem that were introduced by Sen in his essay, 'Missing Women'. Sen cannot be faulted because his analysis was based on neglect and lack of value of the girl child. In 2003, Sen revisited the problem and highlighted that sex selective abortions had become a common phenomenon in the intervening years. However, the legacy of his initial phrase continued, and this phrase unwittingly ended up providing false personhood to a foetus – now referred to as the 'missing girl-child'. A second reason for this slide is the continuum of discrimination represented by female infanticide and sex selective abortion. The International Conference on Population and Development provided life-cycle logic to the issue of women's reproductive health. Violence against women is also seen within a



life cycle approach. Thus pre-conception sex selection, sex-selective abortion, female infanticide, and nutritional and healthcare related neglect of the girl child also provide a continuum that easily slips into this logic of the life cycle approach. Once again this ends up providing personhood to the foetus. Once the logic was in place and the rhetoric had the legacy of a scholar as eminent as Sen, it was easy to construct the 'sex-selective abortion as the most heinous of all crimes' argument. One suspects that this process of radical construction benefited from a process of mutual reinforcement between civil society players and the UN Agencies who had come very close during the years of the Rio, Vienna, Cairo and Beijing Conferences.

### iii. What is Right and What is Not

Before proceeding further, it would be instructive to differentiate the issue of sex selection from abortion, no matter how closely intertwined they appear. One is an issue of reproductive health and rights the other clearly belonging to the domain of gender discrimination and sexist practice. The issue of gender discrimination and son preference may also be justifiably seen as an issue for social development or women's empowerment without necessarily complicating it as a human rights issue. Unfortunately, the current development discourse seems to indicate that a social issue can only be seen as important or desirable for intervention once it is cast within a rights paradigm, and sex-selective abortion as an issue may also have suffered from this compulsion.

A human rights analysis of sex-selective abortion appears complex since the foetus is not a subject of rights, and the mother's right to abortion ends up allowing sex-selective abortion rather than preventing it. This seems to be the consensus opinion, at least in the context of India and China. The issue of abortion is well settled in human rights scholarship as a right of the mother. However, a more thorough human rights analysis demands that both the purpose and the attributes be examined. The Universal Declaration of Human Rights is explicit in its purpose from its opening statement 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Equality is the fundamental principle and freedom, justice and peace the desired state for people to live in. Equality and justice taken together indicate 'substantive equality' and 'distributive justice' and may become the appropriate framework for examining sex-selective abortion, both in the context of social compulsion and of individual desire. While UN agencies have advised caution, as argued earlier, the principles of equality and distributive justice taken together provide a more than adequate reason for considering the issue of gendered sex selection as a 'third generation' human right, or a community right. The violation in this case is against the group 'women', and the act is gendered sex selection, which can be seen as similar to the gendered withholding of girls from going to school. Gendered sex selection in this framework then arises from and further contributes to the overall secondary position of women in society.

The principles of equality, distributive justice and autonomy provide clues to deriving an ethical position on the issue. However, this calls for applying the 'animal farm principle' of hierarchies and privileging equality and distributive justice above freedom and liberty. In keeping with the principle of greatest good for greatest number, it may be utilitarian to call for a uniform prohibition of sex selection practices, while allowing abortion on demand. This would curtail the freedom of a few to practice sex balancing practices, but that will have to remain since the overwhelming evidence is that sex selection is primarily used to discriminate against women.

### iv. The Need for Complementary Approaches

In a country like India, if sex-selective practices have to be addressed, then sex-selective abortion needs to be addressed as a single phenomenon, but the approach needs to be disaggregated and comprehensive. No approach to sex-selective abortion can be framed only within the strict boundaries of laws and regulations. The laws for sex selection and abortion should be seen distinctly as they are currently in India, allowing women the necessary autonomy to



have abortions according to their informed choice. Laws around sex selection need to be implemented with greater rigor. However, these steps should necessarily be seen as complementary to larger policy interventions around gender equality. The experience of Korea in successfully reversing the earlier trend of decline seems to suggest that there need to be three distinct approaches which should be taken together within a very strong movement for social change and equality. First, issues around inter-generational dependence need to be addressed by introducing social security measures like old age pension and universal healthcare, funded through taxation. Secondly, the constitutional provision of gender equality and continuing discrimination needs to be addressed through appropriate changes and enforcement of laws around inheritance, equal wages, marriage, registration of births and deaths, violence against women, and so on. Thirdly, women's development needs to be promoted through free and compulsory education and other forms of affirmative action. In addition, workforce participation needs to be promoted for comprehensive gender equality. Today the call for 'save the girl child' seems to be working as shorthand for a comprehensive approach, but clearly it is not enough.

Sex ratio is a demographic measure, and in India, there is a long history of addressing demographic issues through incentives. In the case of adverse sex ratio, demographic solutions have been suggested such as providing incentives to couples with single daughters. In the short run these efforts seem to be effective; however, they are antithetical to a rights based approach because they promote reward/punishment based behavior and do not promote the exercise of informed choice. Change needs to be promoted within increased public aspiration for social change and located within the framework of comprehensive policy shift. Thus there needs to be a strong call for gender equality within all social justice movements. Finally, future efforts, especially in India, may also need to reverse and address any damage that may have already taken place by associating sex-selective abortion with individual harm and violence against women.



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Centre for Health and Social Justice  
Basement of Young Women's Hostel No. 2  
Near Bank of India, Avenue 21, G Block  
Saket, New Delhi- 110017

Telephone: +91-11-26535203, +91-11-26511425

Fax: +91-11-26536041; Email: [chs@chs.org](mailto:chs@chs.org)

[www.chs.org](http://www.chs.org)